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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,039	03/04/2002	James Hammer	1342-61338	6479

7590 07/13/2005

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT PAPER NUMBER

1722

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,039

Applicant(s)

HAMMER ET AL.

Examiner

Thu Khanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: translation of JP2001-191314

DETAILED ACTION

1. In view of the Appeal Brief filed on April 15, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-39 and 52 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the Japanese reference (JP 2001-191314A).

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The JP'314 reference discloses a molding apparatus for forming concrete blocks, comprising mold walls (210) and a plurality of partition walls (230) defining a plurality of mold cavities and openings for removing the blocks from the cavities (Fig. 5a-b), wherein the walls including a concave-convex patterned surface (231) having a plurality of concave parts (232) and a plurality of projections (233) for forming a uniform pattern throughout most of the surface (720) of the concrete blocks; and a plurality of mold inserts (240) extended into the mold cavities.

The JP'314 fails to disclose that the projections are tapered or having pyramidal shape.

Because the molding surface having a concave-convex pattern in order to form a block having texture resembling that of a natural stone (translation copy, TC,[0003]), it's either inherent or it would be obvious to modify the projections to have tapered or pyramidal shape. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23 and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regard to the orientation of the projections on the mold surface, it would have been obvious to one of ordinary skill in the art to rearrange the projections on the mold surface to form a desired embossing pattern on the block surfaces. It has been held that by merely shifting the position of the parts without changing the operation of the mechanism will not render the claims patentable and the placement of the mechanism is an obvious matter of design choice. In *re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

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In regard to the slope of the side surface of the projections, it would have been obvious to one of ordinary skill in the art to change the slope of the side surfaces depending on the desired shape of the projections. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23 and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regard to the masonry blocks that are uncured during the molding process, the JP'314 reference discloses that the block (600) is extracted from the molding box (200) into a conveyor (500) where it's being cured (TC [0033]). Therefore, the forming blocks are uncured or only partially cured during the molding, where most of the curing is done outside the mold after the block has been formed.

Response to Arguments

4. Applicant's arguments with respect to claims 1-39 and 52 have been considered but are moot in view of the new ground(s) of rejection.

The applicants have repeatedly argued that the JP'314 reference is incapable of forming uncured block. The heater is used to harden the block, so that the block won't break apart as it come out of the mold, but not to cure it. As described in the translation copy, the block is cured on the conveyor outside the mold, see paragraph [0033].

In regard to the shape of the projections, it would have been obvious to one of ordinary skill in the art to modify the shape or the orientation of the projections in order to obtain a product having a desired pattern. It would also have been obvious to one of ordinary skill in the art to provide concave-convex projections with different slope angles, different shapes if so desired on the product. It would also have been obvious to one of ordinary skill in the art to

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rearrange the projections on the molding surface, so that the projections could randomly arranged, uniformly arranged, or being arranged at different interval depending on the desired pattern on the product. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23 and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fladgard et al (5,722,386) disclose a method and apparatus for forming ornamental edges on cement siding workpieces, comprising a shearing blades for cutting the cement block, wherein the shearing blades having different ornamental shapes to form different ornamental features on the cement, such as a spaced apart scalloped shape, a sawtooth shape, a semi-hexagonal shape or a truncated semi-circle shape. It would, therefore, be obvious to a skilled artisan to change the pattern of the shaping means in order to form a concrete block having a desired pattern.

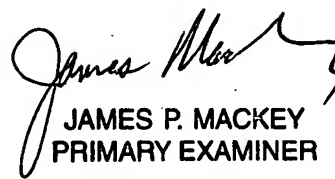
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN


JAMES P. MACKEY
PRIMARY EXAMINER
7/11/05